

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 1378 of 2010
Date of decision: 2.11.2015**

Subhash Chand Sharma

...Petitioner

versus

Sangeeta Sood @ Chopra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajpal Singh, Advocate
for the petitioner.

Mr. A.P.Bhandari, Advocate
for respondent No.1.

RAJIV NARAIN RAINA, J.(ORAL)

1. This petition has been filed challenging the order of the Labour Court-1, Faridabad dated August 13, 2009 passed in an application under Section 33 C (2) of the Industrial Disputes Act, 1947 (in short, "ID Act"), claiming amounts due from the respondent employer which are alleged to remain unpaid.

2. In defence of the action, Mrs. Sangeeta Sood @ Chopra, wife of Anup Chopra, occupier, M/s Sh. Ganesh Industries appeared before the Labour Court contested the case by putting forward her defence evidence in the witness box deposing that the petitioner was not a 'workman' and was in fact discharging duties and responsibilities of a manager in a supervisory capacity and therefore did not fall within the meaning and definition of workman under Section 2(s) of the ID Act. Therefore, the application was not maintainable for lack of jurisdiction.

3. It was the case of the petitioner that he was appointed as a Helper and then was assigned the duties of a Turner and thereafter was

made a Foreman in the factory run by M/s Sh. Ganesh Industries. There is no dispute that he served the employer between November 1987 to June 1998 when the firm was closed. It was his claim in the application that he had not been paid full wages since January 1988 till June 1998, closure compensation, leave wages, gratuity etc;. In this manner, he claimed ₹ 19,800/- as earned wages, ₹ 20,942/- as leave wages, ₹ 18,150/- as closure compensation and ₹ 18,150/- as gratuity from the employer. Thereby, the total amount claimed amounted to ₹ 79,834/-. He claimed the amount along with interest @ 18% per annum. He prayed that these amounts be computed by the Labour Court in exercise of its jurisdiction to compute money due which authority is in the nature of execution proceedings. He claimed that these were pre-existing rights and the application deserved to be accepted and decreed.

4. Contesting the case, the management refuted the claim based on the prima facie premise that the claimant was not a 'workman' at all and therefore, did not fall within the purview of the ID Act. Besides, Mr. Bhandari, learned counsel appearing for the respondent submits that gratuity is neither computable nor payable by the Labour Court under the ID Act since specific remedy is provided and is available to the workman to stake a claim on alleged unpaid gratuity before the Authority under the Payment of Gratuity Act, 1972 and the court a quo lacked jurisdiction for this amount. For this proposition he cites the decision of the Supreme Court in the case **State of Punjab vs. Labour Court Jullunder and Others**, (1980)1 SCC 4=AIR 1979 SC 1981, holding as much that gratuity would not be executable under Section 33 C(2) of the ID Act since the Gratuity Act is a

special law as against the ID Act which in relationship with the sister labour law becomes the general law and the general gives way to the special law.

5. To prove the status of the petitioner is not one of workman, Mrs. Sangeeta Chopra appeared in the witness box and faced cross-examination, a copy of the deposition has been attached with this petition as Annexure P-3. Besides, the oral statement of Mrs. Sangeeta Chopra, the management produced another witness, namely, Subhash Chopra, who the learned counsel for the petitioner submits is the brother-in-law of Mrs. Sangeeta Sood, [Chopra].

6. This Court has read the evidence on file assisted by the learned counsel for the parties and do not wish to express any opinion on it in view of the order of remand proposed to be passed so that neither of the parties is prejudice by anything said on merits. This is for the reason that this Court has reached the conclusion that the order of the Labour Court is rather unsatisfactory and displays casual judicial approach in trying to resolve the question whether the petitioner was part of management or was a workman in the true sense of the terms. The chinks found in the labour court's reasoning are too many to be audited and discussed threadbare in the present order. For instance, it is of the view that the petitioner deserves to be non-suited for the reason that he has nowhere stated that he was not possessed of managerial powers or administrative control of the unit. The Labour Court has wrongly shifted the onus on the petitioner on the strength of the affidavit of RW-1 Mrs. Sangeeta Chopra tendered by way of examination-in-chief but has failed to notice the cross-examination recorded and to consider what it adds up to. The affidavit by way of examination-in-

chief may have alleged powers of a manager having administrative control over others but the examination-in-chief has to be read with the cross-examination as a whole and the cross-examination speaks a different story which both parts have to be reconciled by the labour court in the first instance but it can't be seen as brushing the evidence under the carpet.

7. The Labour Court also does not appear to have acquainted itself with the law on the subject in considering whether a person falls on the managerial side or on the workman's side of the establishment and it could have cleared its doubts easily after research and fathoming the principles laid down in a large number of judgments including the judgment of the Supreme Court in **Burmah Shell Oil Storage & Distribution Company of India Ltd v. Burmah Shell Management Staff Association**, AIR 1971 SC 992 where the litmus tests have been spelled out by the Supreme Court while dealing with a wide spectrum of employment in character and content found in *Burmah Shell* company which are only too well known to be re-emphasized here and are better read than explained. There are other important decisions of the Supreme Court also on the moot point which require no elaboration for the present, and which, had the Labour Court been acquainted of, it would have passed a satisfactory award by properly weighing the evidence in a balance of probabilities after appreciating its probative value and it could have then proceeded to adventure whether the petitioner was a workman or not or a manager or a person performing supervisory duties while employed in a supervisory capacity coupled with the salary bar. More or less, the focus is on the nature of duties and what evidence is there of it on record adduced by the parties. The labour court

should also have been aware that when decisions of the Supreme Court are relied upon and applied to fact situations then it is not enough to quote the head note or the catch words found in private reports of judgments made by reporters and editors of law journals. The ratio of judgments are normally not truly forthcoming from catch words and this practice of quoting catch words in judgments and orders deserves to be deprecated and for this, the labour court would read the decision of the Supreme Court on how to read judgments and to cull out their ratio in [Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr.](#), 2002 (1) SCR 621=AIR 2002 SC 834 the Supreme Court held that the Court should not place blind reliance on decisions without discussing the fact situation of the decision on which reliance is placed. For the method of reading judgments in order to cull out the ratio and what is binding precedent: See also on the point, Supreme Court rulings in [State of Orissa v. Sudhangshu Sekhar Mishra](#), AIR 1968 SC 647; [Ambica Quarry Works v. State of Gujarat](#), (1987) 1 SCC 213; [Bhavanagar University v. Politana Sugar Mills \(P\) Ltd](#), (2003) 2 SCC 111; [Bharat Petroleum Corporation Ltd. v. N.R. Vairaman](#), (2004) 8 SCC 579; [Ispat Industries Ltd. v. Commissioner Customs, Mumbai](#), (2006) 12 SCC 583. While on the moot issue of definition of 'workman' the labour court will also profit from a reading inter alia of the judgment of the Supreme Court in **S.K.Verma v. Mahesh Chandra**, AIR 1984 SC 1462 to get a feel of the subject matter. This is not to say that nothing more is to be read while deliberating on the subject, on which vital rights of the parties depend which are not to be treated lightly.

8. On remand, the labour court would be free to examine all these

issues and would not be influenced by anything said in this order so that the balance of justice is restored between the parties. However, in making a fresh appraisal of the evidence, the party would not be permitted to produce any further evidence and the material existing on record alone would be considered by the labour court to take a fresh view because the view taken by the labour court in the impugned order is perverse and does not qualify as acceptable judicial reasoning for purposes of judicial review notwithstanding the narrow scope of jurisdiction.

9. For the reasons aforesaid, the writ petition is allowed to the extent that the impugned order is quashed by issuance of a writ of certiorari. The case is remanded to the labour court for a fresh decision as directed above. Parties to appear before the labour court on December 14, 2015. Since the matter is an old one and no further evidence is to be led, the matter would be decided afresh on the available materials on record within four months from the date of placing of a certified copy of this order on the file of the labour court. Order dasti.

2nd November, 2015.
Shivani Kaushik

(RAJIV NARAIN RAINA)
JUDGE